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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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STATE OF UTAH and EMERY COUNTY  
OF THE STATE OF UTAH,

Plaintiff

vs.

UNITED STATES OF AMERICA,  
DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT,

Defendants.

**COMPLAINT TO QUIET TITLE**

Case No.

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Plaintiffs State of Utah (“State”) and Emery County of the State of Utah (“Emery” or  
“the County”) allege as follows:

INTRODUCTION

1. This is an action to quiet title to certain described rights-of-way for highways, including the scope thereof, under the grant of R.S. 2477, an 1866 enactment of Congress.

### JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1346(f) and 2409(a) (quiet title to real property in which the United States claims an interest).

3. Venue is proper under 28 U.S.C. § 1391(e) inasmuch as the lands in issue are located in Utah.

### PARTIES

4. The State is one of fifty sovereign states forming the United States of America, having been admitted to the Union on January 4, 1896 on an equal footing with the original states. The executive power of the State is vested in the Governor, who is responsible for seeing that the laws of the State are faithfully executed. Utah Const. art. VII, § 5; Utah Code Ann. § 67-1-1.

5. Emery County is a political subdivision of the State of Utah responsible for providing local government services, including but not limited to road construction, reconstruction and maintenance, search and rescue, emergency medical services and law enforcement, all of which depend on access along the highways.

6. The State and Emery County are joint owners of the R.S. 2477 rights-of-way in Emery County. Utah Code Ann. § 72-5-302(2). An R.S. 2477 right-of-way is an interest in real property consisting of the dominant estate in the land.

7. Defendant United States of America is the federal government and the owner of the servient estate adjacent to the highways relevant to this action as further described below.

8. Defendant United States Department of the Interior (“DOI”) is the department of the federal government to which Congress delegated specific authority to administer the public lands under federal law, and hence the above-referenced servient estate.

9. Defendant United States Bureau of Land Management (“BLM”) is the agency within the DOI that has been delegated specific authority by Congress to administer public lands, and hence the above-referenced servient estate, under federal law.

BACKGROUND AND ALLEGATIONS  
REGARDING R.S. 2477 HIGHWAYS WITHIN THE STATE OF UTAH

10. R.S. 2477, enacted by Congress in 1866, provides in pertinent part as follows:

§ 8. And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

Mining Act of July 26, 1866, § 8, 14 Stat. 251, 253, 43 U.S.C. § 932 (1970) (repealed with savings provisions).

11. An R.S. 2477 right-of-way is a valid existing property right – an easement recognized by law as the dominant estate in the land.

12. Though R.S. 2477 was repealed in 1976, the repealing legislation specifically recognized the continuing validity of R.S. 2477 rights-of-way established as of 1976. Federal Land Policy Management Act (“FLPMA”) §§ 509(a), 701(a) and 701(h), codified respectively at 43 U.S.C. §§ 1769(a) and 1701, savings provisions (a) and (h).

13. R.S. 2477 was self-executing; ratification or approval by the federal government was not required to perfect an R.S. 2477 right-of-way. Sierra Club v. Hodel, 848 F.2d 1068, 1083-84 (10th Cir. 1988).

14. As a matter of federal law, state law controls perfection and scope of an R.S. 2477 right-of-way. Id. at 1081-84.

15. Under Utah law an R.S. 2477 right-of-way could be established (“perfected”) by public use for a period of ten years without formal action by any public authority, or by other affirmative action indicating an intent to accept the grant, including but not limited to construction or maintenance of a road.

16. The scope of R.S. 2477 rights-of-way is that which is reasonable and necessary for the type of use to which the right-of-way has been put. Hodel, 848 F.2d at 1083-1084 (affirming the District Court’s “reasonable and necessary” definition).

17. Such areas along the roadway beyond the actual beaten path as are reasonable and necessary to accommodate “sound engineering practice,” including lands on which attendant accouterments such as drainage ditches, culverts, shoulders and cut slopes existed as of October 21, 1976, or any applicable earlier reservation cut-off date, or reasonably and necessarily are added after that date to accommodate increased travel, are “part of the reasonable and necessary use” and are therefore within the scope of each highway right-of-way. Hodel, 848 F.2d. at 1083-84. The scope also includes such areas as are reasonable and necessary to accommodate service of such accouterments as are put in place pursuant to that sound engineering practice.

18. The scope of the R.S. 2477 right-of-way includes the right to conduct reasonable and necessary maintenance within the right-of-way and to make reasonable and necessary improvements within it without any BLM authorization. Id. at 1083, 1086 n.16. This necessary legal consequence is acknowledged in the 1990 DOI policy regarding R.S. 2477, which provides as follows: “The holder of the right-of-way has no requirement to inform the BLM of its activities on or within the right-of-way. As such, the Department has no authority under R.S. 2477 to review and/or approve such reasonable activities.” BLM Instruction Memorandum No. 90-589. See also Department of the Interior’s Report to Congress on R.S. 2477 (June 1993) (Appendix II, Exhibit M at 4) (stating that activities within the R.S. 2477 right-of-way that are within the jurisdiction of the right-of-way holder “include, but are not necessarily limited to, maintenance, reconstruction, upgrading, and reasonable activities”).

19. The scope of the R.S. 2477 right-of-way is ““not . . . restricted to the actual beaten path,”” but includes the right to widen the road to meet the exigencies of increased travel even after 1976, “at least to the extent of a two-lane road” to allow travelers to pass each other. Hodel, 846 F. 2d at 1083.

20. Though R.S. 2477 was repealed on October 21, 1976 by the Federal Land Policy and Management Act (FLPMA), R.S. 2477 rights-of-way in existence on the date of FLPMA’s passage are protected under that act.

21. FLPMA section 701(a) provides:

Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way,

or other land use right or authorization existing on the date of approval of this act.

22. FLPMA section 701(h) provides:

All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

23. FLPMA section 509(a) provides:

Nothing in this title [43 U.S.C. §§1701-1784] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted.

24. In 1939, DOI regulations provided:

[R.S. 2477 (43 U.S.C. 932)] becomes effective upon the construction or establishing of highways, in accordance with the state laws, over public lands not reserved for public uses. No application should be filed under said R.S. 2477 as no action on the part of the Federal Government is necessary.

43 C.F.R. §244.55 (1939).

25. In 1963, BLM regulations provided:

Grants of [R.S. 2477 rights-of-way] become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. No application should be filed under R.S. 2477, as no action on the part of the Government is necessary.

43 C.F.R. §244.58 (1963).

26. In 1974, BLM regulations provided:

No application should be filed under R.S. 2477, as no action on the part of the Government is necessary. . . . Grants of [R.S. 2477 rights-of-way] become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses.

43 C.F.R. §§2822.1-1 & 2822.2-1 (1974).

27. BLM's current regulations state that if an attempt to administer rights conferred under a right-of-way grant issued prior to October 12, 1976 "diminishes or reduces any rights conferred by the grant or the statute under which it was issued, . . . the provisions of the grant or the then existing statute shall apply." 43 C.F.R. §2801.4.

28. The language of BLM's current regulations was explained by BLM as follows:

[I]f questions should arise regarding the rights of a right-of-way grant holder under a grant or statute, the earlier editions of the Code of Federal Regulations on rights-of-way will remain available to assist in interpretation of the rights conferred by the grant or earlier statute . . . . In carrying out the Department's management responsibilities, the authorized officer will be careful to avoid any action that will diminish or reduce the rights conferred under a right-of-way grant issued prior to October 21, 1976.

51 Fed. Reg. 6542 (February 25, 1986).

29. BLM policy has required that a road be considered a public road when public funds have been spent on the road. BLM Manual, Rel 2-229, 2801.

30. BLM policy has stated that "[w]hen the history of a road is unknown or questionable, its existence in a condition suitable for public use is evidence that construction sufficient to cause a grant under R.S. 2477 has taken place." BLM Manual, Rel 2-229, June 30, 1986. See Sierra Club v. Hodel 675 F. Supp. 594, 605 (D. Utah 1987).

31. DOI and BLM have recognized that under law BLM need not authorize activities conducted within the scope of an R.S. 2477 right-of-way.

32. The Secretary of Interior has recognized that BLM has no adjudicative or decision-making role to play in determining the existence or scope of an R.S. 2477 right-of-way and that any conclusions drawn by the agency are for administrative convenience only, thus not appealable to the Interior Board of Land Appeals (“IBLA”), leaving actual decisions to the courts.

33. DOI and BLM have recognized the historic DOI regulation providing that validity of an R.S. 2477 right-of-way was not dependant on DOI or BLM recognition of that validity.

34. Sixty-nine percent of the land base in the State of Utah is owned by the federal government and large numbers of roads in Utah traverse lands owned by the federal government.

35. “Normal Maintenance Activities” as used in this complaint means routine maintenance involving use of road graders and other equipment to conduct activities including, but not limited to, the following:

- a. Making minor vertical and horizontal alignment alterations as appropriate to provide or improve safety;
- b. Grooming and grading of the previously constructed road surface;
- c. Establishing and maintaining the crown with materials gathered along the road;
- d. Filling ruts;
- e. Spot filling with the same or improved materials;
- f. Leveling or smoothing washboards;
- g. Clearing the roadway of obstructing debris;
- h. Cleaning culverts, including head basins and outlets;
- I. Resurfacing with the same or improved materials of the same general type;
- j. Maintaining, repairing, replacing and installing rip rap;
- k. Maintaining drainage;
- l. Maintaining and repairing washes and gullies;
- m. Maintaining, repairing, replacing and installing culverts as necessary to protect the existing surface from erosion;
- n. Repairing washouts;



- o. Maintaining, repairing, replacing and installing marker posts;
- p. Maintaining, repairing, replacing and installing water crossings;
- q. Maintaining, repairing, replacing and installing cattle guards;
- r. Maintaining, repairing, replacing and installing road signs.;
- s. Repairing, stabilizing and improving cut and fill slopes;
- t. Removing snow.

36. Performance of Normal Maintenance Activities on County roads minimizes degradation of the servient estate by decreasing erosion, fugitive dust and other impacts on adjacent lands.

37. BLM historically did not attempt to require the County to inform BLM, submit plans, or request approval or other authorization before conducting Normal Maintenance Activities on the roads subject to this suit.

38. BLM historically did not object to Normal Maintenance Activities on these roads.

39. Emery County has performed Normal Maintenance Activities on thousands of miles of roads for decades. These activities are generally conducted on an “as needed” basis, taking into account Emery County’s financial resources available for that purpose.

#### GENERAL ALLEGATIONS REGARDING THIS QUIET TITLE ACTION

40. This is an action under 28 U.S.C. §2409a to quiet title to seven R.S. 2477 rights-of-way in Emery County of the State of Utah. The rights-of-way are described herein and in Exhibits 1 through 17, incorporated herein.

41. The State and Emery County hold their R.S. 2477 right-of-way interests in the roads in issue without necessity of any approval of the federal government (Sierra Club v. Hodel, 848 F.2d 1068, 1078 (10th Cir. 1988)), those right-of-way interests under R.S. 2477 entitle the

State and Emery County “to make reasonable and necessary improvements within the boundaries of the right-of-way” (Id. at 1086 n.16), and “no BLM authorization is needed for construction to proceed.” Sierra Club v. Hodel 675 F. Supp. 594, 605 n.31 (D. Utah 1987). Accordingly, the State and Emery County previously performed maintenance and construction activities on the roads in issue and in the ordinary course would continue to do so.

42. Notwithstanding the facts stated in paragraph 41 above, the BLM takes the position that road construction activities that have not been authorized by the federal government constitute trespass regardless of whether the road is an R.S. 2477 right-of-way. See, e.g., Federal Brief in Southern Utah Wilderness Alliance, et al. v. Bureau of Land Management, et al., Tenth Circuit Court of Appeals, Case Nos. 04-4071 and 04-4073, at 21 (August 2004). Also, BLM has repeatedly presented to representatives of the State of Utah and the Utah Counties a document it proposes as a template for agreements between BLM on the one hand and the State and Counties on the other, stating as follows: “BLM’s position is that until such time that the County’s asserted R.S. 2477 right-of-way has been acknowledged by the Secretary or a federal court of competent jurisdiction, or BLM grants a Title V right-of-way to the County for such purposes, the County may not maintain and/or improve the right-of-way.” BLM has in fact closed portions of the rights-of-way at issue to maintenance as well as vehicular travel. BLM has also issued trespass citations for county maintenance and improvements on other roads in the State. These circumstances present a case or controversy through federal abridgement of the Counties’ rights pertaining to the rights-of-way and constitute a real and immediate threat by the BLM to cite the State and Counties for trespass upon the State’s or Counties’ exercise of their R.S. 2477 rights.

43. The State of Utah, in its own behalf and in behalf of Emery County, filed with the Department of the Interior various documents, which, taken together, constitute a notification of intention to file suit under 28 U.S.C. § 2409a(m). These documents constitute Exhibits 1 through 3, incorporated herein.

44. The documents identified in paragraph 43 as constituting the notification of intention to file suit were dated June 14, 2000, August 31, 2004, and November 3, 2004 and sent to the Secretary of the Department of the Interior by U.S. mail, and the requirement of 28 U.S.C. § 2409a(m) that 180 days pass between the notification and the bringing of an action is satisfied.

45. R.S. 2477 enacted by Congress in 1866, provides in pertinent part as follows:

§8. And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

Some detail regarding R.S. 2477 is supplied above in paragraphs 10 through 33.

46. The descriptions of the roads in the exhibits hereto are the result of field verification and precise location by mapping-grade Global Positioning Satellite (GPS) technology and in some instances digitalization from digital ortho-photo quadrangles published by the United States along the entire length of the roads. Data obtained by GPS has been electronically downloaded to computers where they were checked for accuracy.

47. The age and use of all these roads is verified by aerial photography, government maps, testimony of witnesses who have used or observed use of the roads before 1966, or if the roads were created by so-called mechanical construction, before 1976, or some combination thereof, and in all cases by the testimony of witnesses.

48. All such roads were open to the public as of 1976, but portions of each of the roads at issue have since been closed by the BLM.

49. All such roads at the time of their perfection by use or construction were located on open public lands.

50. Road uses as of 1976 continued until the BLM closed the rights-of-way at issue, though specific means of use may have evolved as conditions have changed, including increased use by such travelers as tourists, land managers and experts.

51. The scope of each of these R.S. 2477 rights-of-way, as a matter of federal law, is governed by Utah law. That scope is that which is reasonable and necessary for the type of use to which the road has been put; it includes the beaten path plus reasonable and necessary accouterments such as drainage ditches, culverts, shoulders, back slopes, realignments that have been made in response to natural impacts on the road such as flooding and rock slides, minor deviations from the common way to avoid encroachments, obstacles or obstructions upon the road, and the right to enhance the road even after 1976 to meet the exigencies of increased travel for traditional uses, at least to the extent of improving the road to two lanes so passengers could pass each other.

52. Reasonable and necessary management activities on the road are also part of the scope of the R.S. 2477 right-of-way of each of the roads that is a subject of this complaint. As long as the R.S. 2477 owner stays within the right-of-way, as defined in the previous paragraph, that owner may make reasonable and necessary improvements without any BLM authorization. Sierra Club v. Hodel, 848 F. 2d 1068, 1086 n.16 (10th Cir. 1988). As BLM stated in its 1993

Report to Congress: “Reasonable activities within the R.S. 2477 right-of-way are within the jurisdiction of the holder. These include, but are not necessarily limited to, maintenance, reconstruction, upgrading, and [other] reasonable activities. BLM’s concern is whether such activities are confined within the boundaries of the right-of-way or whether such activities are so extreme that they will cause unnecessary degradation of the servient estate.” Department of Interior’s Report to Congress on R.S. 2477 (June 1993) (Appendix II, Exhibit M at 4). Reasonable and necessary management includes the right reasonably to go beyond the traveled way in order to perform the indicated activities.

53. All such roads at the time of their perfection, through use or construction or both or otherwise, were located on open public lands.

#### FIRST CAUSE OF ACTION

(TO QUIET TITLE IN SID’S (SWASEY’S) LEAP ROAD IN EMERY COUNTY)

54. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 53.

55. Sid’s Leap Road is located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 4 and 11, incorporated herein by this reference. Exhibit 4 reflects the location of the road as identified and plotted using GPS or digital technology. Sid’s Leap Road links up with other roads in the County’s road system.

56. Construction and maintenance of the road since at least as early as 1971 was performed by bulldozers and similar heavy machinery. In 1971 one witness with road grading experience personally observed features, including berms and stretches of smooth road, that were

created using heavy machinery. In 1975 another witness with significant road grading experience personally observed berms created by Caterpillar bulldozers. This witness indicated that such berms were visible along the road all the way to Sid's Leap.

57. Sid's Leap Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto.

58. Travelers on the road from before 1966 and continuing thereafter included those who went by truck and automobile. Witnesses who traveled the road in 1971 and 1975 state that the road received a great deal of use as evidenced by the numerous tracks and wheel ruts that the witnesses observed while traveling the road.

59. The purposes for use of this road include livestock operations, sightseeing, recreation, search and rescue, law enforcement, prospecting, oil and gas development, land management, and traveling in and through the area.

60. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way by closing the final two miles of the road. The road has been closed by means of a buck and rail fence that prevents vehicular travel beyond the wilderness study area boundary. Defendants have also asserted their claim to the dominant estate constituting Plaintiff's R.S. 2477 right-of-way by their actions as described above in paragraphs 41 and 42.

## SECOND CAUSE OF ACTION

(TO QUIET TITLE IN MEXICAN MOUNTAIN ROAD IN EMERY COUNTY)

61. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 53.

62. Mexican Mountain Road is located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 5 and 12 and incorporated herein by this reference. Exhibit 5 reflects the location of the road as identified and plotted using GPS or digital technology. Mexican Mountain Road links up with other roads in the County's road system.

63. Construction and maintenance of the road before 1976 was performed by bulldozers and mechanical road graders beginning at least as early as the early 1960s. During the early 1960s one witness with road grading experience observed berms and other marks characteristically created by Caterpillar bulldozers grading a road. In 1970 another witness with road grading experience personally observed berms and smooth patches of road that had been created using heavy machinery. A witness testified that an airstrip, serviced by Mexican Mountain Road, was built at the end of the road in either 1974 or 1975.

64. Mexican Mountain Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto, beginning at least as early as the early 1960s. Witnesses who traveled the road in the early 1960s and 1970 state that the road received significant amounts of use as evidenced by the numerous tracks and wheel ruts that the witnesses observed while traveling the road.

65. The purposes for use of this road include ranching, farming, hunting, sightseeing, oil and gas exploration and development, recreation, search and rescue, law enforcement, land

management, and traveling and through the area. The road was also used to access a local airstrip beginning at least as early as 1974 or 1975.

66. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way by closing the final five miles of the road. The road has been closed by means of a locked gate that prevents vehicular access to the closed portion of the road. Defendants have also asserted their claim to the dominant estate constituting Plaintiff's R.S. 2477 right-of-way by their actions as described above in paragraphs 41 and 42.

### THIRD CAUSE OF ACTION

#### (TO QUIET TITLE IN JUNE'S BOTTOM ROAD IN EMERY COUNTY)

67. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 53.

68. June's Bottom Road is located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 6 and 13, incorporated herein by this reference. Exhibit 6 reflects the location of the road as identified and plotted using GPS or digital technology. The road links up with other roads in the County's road system.

69. June's Bottom Road was established by means of bulldozers and mechanical road graders before 1976. In 1934 an individual watched his father and grandfather create dugways and otherwise perform construction and maintenance of a portion of the road by means of manual labor and black powder. Another individual graded the entire length of the road, excepting slick rock portions, with a Caterpillar bulldozer at least as early as 1957. In 1972, and



continuing thereafter, a third individual personally observed berms and the tracks of Caterpillar tractors along the road.

70. June's Bottom Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto.

71. Since at least as early as 1957 uses of June's Bottom Road included sightseeing, camping, recreation, search and rescue, law enforcement, land management, oil and gas exploration and development, livestock operations, and traveling in and through the area.

72. Travelers on the road from before 1966 and continuing thereafter included those who went by truck and truck-mounted drilling rigs.

73. At the time of its first use and construction June's Bottom Road was located on open public lands.

74. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way by closing the road in its entirety. The closure, just off of County Road 1025, has been effected by means of a carsonite delineator with a "No Vehicles" decal. Defendants have also asserted their claim to the dominant estate constituting Plaintiff's R.S. 2477 right-of-way by their actions as described above in paragraphs 41 and 42.

#### FOURTH CAUSE OF ACTION

(TO QUIET TITLE IN COPPER GLOBE ROAD IN EMERY COUNTY)

75. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 53.

76. Copper Globe Road is located on public lands, not reserved for public uses, as more particularly shown on Exhibits 7 and 14, attached hereto and incorporated herein by this reference. Exhibit 7 reflects the location of the road as identified and plotted using GPS or digital technology. Copper Globe Road links up with other roads in the County's road system.

77. Construction of the road before 1976 was regularly performed by bulldozers and mechanical graders beginning at least as early as 1958. One individual with grading experience observed evidence of construction, including berms, grader tracks, and artificially smooth portions of the road, as early as 1957 or 1958. That same individual personally observed Caterpillar graders performing work on the road before and after 1976. Another individual personally observed Caterpillar bulldozer marks along the road as early as 1963 and personally graded the road in 1975 and 1976.

78. Copper Globe Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto. Since at least as early as the early 1960s witnesses have personally used the road for hunting, prospecting, recreation, and sightseeing. Since at least as early as 1957 witnesses have observed people using the road for tourism, recreation, livestock management, and administrative purposes.

79. The purposes for use of said road include livestock management, hunting, mining, oil and gas exploration and development, sightseeing, recreation, land management, search and rescue, and traveling in and through the area.

80. Travelers on the road from before 1966 and continuing thereafter included those who went by horseback, truck, and automobile. Witnesses indicate the road was used regularly during this time period.

81. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way by closing a portion of the Copper Globe Road that leads to and from the Copper Globe Mine. After announcing the closure of the road in a 2003, the federal government marked the closure at each end of the road with carsonite delineators bearing "No Vehicles" decals. Defendants have also asserted their claim to the dominant estate constituting Plaintiff's R.S. 2477 right-of-way by their actions as described above in paragraphs 41 and 42.

#### FIFTH CAUSE OF ACTION

##### (TO QUIET TITLE IN RED HOLE DRAW ROAD IN EMERY COUNTY)

82. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 53.

83. Red Hole Draw Road is located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 8 and 15, incorporated herein by this reference. Exhibit 8 reflects the location of the road as identified and plotted using GPS or digital technology. Red Hole Draw Road in Emery County links up with other roads in the County's road system.

84. Construction of the road before 1976 was performed by Caterpillar graders. At least as early as 1958 an individual with grading experience observed evidence of mechanical

grading activity on the road in the form of berms and artificially smooth portions of the road. An individual also personally observed mechanical grading activity on the road prior to 1976.

85. Red Hole Draw Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto. An individual frequently traveled the road from 1957 or 1958 until 1968. During that time period the individual observed people using the road for livestock management purposes, recreation, and sightseeing.

86. The purposes and uses of the road include livestock operations, sightseeing, recreation, search and rescue, law enforcement, land management, and traveling in and through the area.

87. Travelers on the road from before 1966 and continuing thereafter included those who went by recreational vehicles and trucks.

88. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way by closing Red Hole Draw Road. A carsonite delineator with a "No Vehicles" decal has been placed at the point of closure. Defendants have also asserted their claim to the dominant estate constituting Plaintiff's R.S. 2477 right-of-way by their actions as described above in paragraphs 41 and 42.

#### SIXTH CAUSE OF ACTION

(TO QUIET TITLE IN THE LINK FLAT ROAD PORTIONS IN EMERY COUNTY)

89. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 53.

90. The Link Flat Road Portions are located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 9 and 16 incorporated herein by this reference. Exhibit 9 reflects the location of the road as identified and plotted using GPS or digitized technology. The Link Flat Road Portions link up with other roads in the County's road system.

91. The Link Flat Road Portions were established by means of road graders prior to 1976. One individual with grading experience personally observed evidence of mechanical construction along the road, in the form of berms, displaced pinyon and juniper, and Caterpillar grader tracks, since at least as early as 1965 or 1966.

92. The Link Flat Road Portions were also established before October 21, 1976, by continuous public use for at least ten years prior thereto. One individual periodically traveled the road from 1965 or 1966 until 1989. During that time period the individual frequently observed other vehicles traveling the road. Beginning at least as early as the early 1960s another individual used the road for uranium exploration and noted, based on the road's condition, that the right-of-way was regularly used during that time period.

93. The indicated road portions have been open to the public for all to use, to come and go as they pleased, since at least as early as 1965 or 1966 and continuing through 1976 and beyond.

94. The purposes for use of said road portions include ranching, uranium exploration, sightseeing, camping, recreation, search and rescue, law enforcement, land management, and traveling in and through the area.

95. Travelers on the road from before 1966 and continuing thereafter included those who went by recreational vehicle and pickup truck.

96. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way by closing two road spurs that form part of the Link Flat Road Complex. The BLM effected the closure of the road spurs at issue by means of the BLM's 2003 Route Designation Plan, and the placement of a carsonite delineator bearing a "No Vehicles" decal at a point of closure. Defendants have also asserted their claim to the dominant estate constituting Plaintiff's R.S. 2477 right-of-way by their actions as described above in paragraphs 41 and 42.

#### SEVENTH CAUSE OF ACTION

(TO QUIET TITLE IN THE SEEGER'S HOLE ROAD PORTIONS IN EMERY COUNTY)

97. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 53.

98. The Seeger's Hole Road Portions are located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 10 and 17, incorporated herein by this reference. Exhibit 10 reflects the location of the road as identified and plotted using GPS or digital technology. The Seeger's Hole Road Portions in Emery County link up with other roads in the County's road system.

99. Construction of the road before 1976 was performed by Caterpillar graders. In 1975 a local resident graded the road portions with a Caterpillar bulldozer. While grading the

road portions in 1975, the local resident reported seeing berms created by previous grading activity.

100. The purposes and uses of the road include livestock operations, sightseeing, recreation, search and rescue, law enforcement, land management, and traveling in and through the area.

101. Travelers on the road from before 1976 and continuing thereafter included those who went by recreational vehicles and trucks.

102. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way by closing portions of the Seeger's Hole Road Complex, as indicated by carsonite delineators and decals declaring the road is closed to vehicles. Further, small rocks have been placed on the road above the dugway in a manner that impedes vehicular travel. Defendants have also asserted their claim to the dominant estate constituting Plaintiff's R.S. 2477 right-of-way by their actions as described above in paragraphs 41 and 42.

#### REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request relief and judgment against Defendants as follows:

1. Quiet title in and to each highway described above;
2. Include within the scope of each such highway: a) that which is reasonable and necessary for the types of use to which the right-of-way had been put prior to 1976, b) the right to conduct ordinary maintenance activities within the right-of-way, including making improvements, short of paving the road, and minor reasonable and necessary deviations from the

common way, without any federal authorization, c) the right to widen the road at least to the extent of a two-lane road to allow travelers to pass each other when increased travel for traditional uses renders such improvement reasonable and necessary, and d) areas along the roadway beyond the actual beaten path that are reasonable and necessary to accommodate reasonable and necessary accouterments such as drainage ditches, shoulders, culverts and road signs that accord with sound engineering practices, including the requirements of the American Association of State Highway and Transportation Offices (“AASHTO”), and to provide reasonable and necessary servicing of the road and such accouterments as are put in place pursuant to that sound engineering practice;

3. Award the Plaintiffs attorneys’ fees and costs to the extent permitted by law; and
4. Grant Plaintiffs such further relief as may be appropriate.

DATED this \_\_\_\_\_ day of June, 2005.

Respectfully submitted,

MARK L. SHURTLEFF  
Utah Attorney General

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Assistant Attorneys General  
Attorneys for Plaintiffs





# CERTIFICATE OF SERVICE

I hereby certify that on June \_\_\_\_, 2005, I caused a copy of the attached COMPLAINT TO QUIET TITLE to be served via first-class, certified United States mail, postage pre-paid, on the following at their last known addresses:

United States of America  
Alberto Gonzales, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

United States of America  
Gale A. Norton, Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20530-0001

Utah State Office Bureau of Land Management  
Sally Wisely, Utah State Director  
324 South State, 4th Floor  
Salt Lake City, UT 84111

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Jaysen R. Oldroyd